

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 626 of 2020

[Arising out of Order dated 08th June, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Amaravati Bench, Hyderabad in I. A. Nos. 41/2020, 42/2020, 51/2020, 52/2020 and 62/2020 in CP (IB) No. 204/7/AMR/2019]

IN THE MATTER OF:

M/s. KVR Industries Private Limited

Having its registered office at
#47 -11-3, Dwarakanagar,
Visakhapatnam – 532016,
Andhra Pradesh, India.

...Appellant/Corporate Debtor

Versus

M/s. P. P. Bafna Ventures Private Limited

Having its registered office at
No. 111, World Trade Centre Tower A,
S. No. 1, Kharadi, H.No. 1B/2/B,
Pune, Maharashtra,
Rep. By Mr. Praful Bafna,
Padmohan Bungalow, Plot No. 69,
Vidyasagar Society, Markey yard,
Pune – 411037

...Respondent/Financial Creditor

Present:-

**For Appellant: Mr. Yogesh Kumar Jagia,
Mr. Vikram Pooserla and
Mr. Aahana Madhyala, Advocates.**

**For Respondent: Mr. S. Niranjan Reddy, Sr. Advocate with
Ms. Malvika Kalra, Mr. Pranav Sarthi and
Ms. Divya Datla Raju, Advocates.**

J U D G E M E N T
(18th December, 2020)

A.I.S. Cheema, J.:

1. This Appeal has been filed by the Appellant/Corporate Debtor M/s. KVR Industries Pvt. Ltd. against Respondent/Financial Creditor-M/s. P.P.Bafna Ventures Pvt. Ltd. against Impugned Order dated 08.06.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Amaravati Bench) at Hyderabad in I.A. Nos. 41 of 2020, 42 of 2020, 51 of 2020, 52 of 2020 and 62 of 2020 in C.P. (I.B) No. 204/7/AMR/2019 (CP/204/2019 in short).

2. The Corporate Debtor had filed I.A. No. 51 and 52 of 2020 mentioned above seeking to initiate Criminal Proceedings against Mr. Praful Prakash Bafna, the authorized signatory of Financial Creditor under Section 340 read with Section 195 (1) (b) (i) of Cr. P.C. read with Section 193 of Indian Penal Code, 1860 (Penal Code in short), after conducting preliminary inquiry and to call Mr. Praful Prakash Bafna for cross-examination. The Corporate Debtor claimed that the signatures on I.A. Nos. 41 and 42 of 2020 by which Applications Financial Creditor sought restoration of Company Petition and restoration of Interim Orders passed earlier in the Company Petition C.P. (I.B) No. 204/7/AMR/2019 (CP/204/2019 in short) were forged.

The Adjudicating Authority accepted Memo filed by Financial Creditor and I.A. Nos. 41 and 42 of 2020 were dismissed as not pressed;

disposed I.A. Nos. 51 and 52 of 2020 with observations that the Corporate Debtor may approach appropriate forum for redressal; I.A. No. 62 of 2020 (which was filed by Corporate Debtor to bring on record the report of Forensic Expert) was dismissed as infructuous; and Adjudicating Authority suo motu restored CP/204/2019 (which had earlier been disposed by Adjudicating Authority when Section 9 Application of an Operational Creditor M/s. Eshwar Enterprises was admitted). CP/204/2019 earlier had been disposed asking Financial Creditor to go and claim before IRP appointed in matter of Operational Creditor M/s. Eshwar Enterprises. Later, the other Petition TCP (IB) No. 111/9/AMR/2019 got settled and was disposed as withdrawn. The Adjudicating Authority thus restored CP/204/2019. Hence the present Appeal.

3. The Appeal prays that the Impugned Orders should be set aside and this Tribunal should pass orders deemed fit.

The Tortuous path; the Disputes & Findings

4. The above paragraph gives brief outline of the reasons for present Appeal. Parties have made various grievances and filed various Applications to counter each other before the Adjudicating Authority. The Adjudicating Authority has referred to the developments in short. The Appeal also refers to the various developments. It appears appropriate to pick up the narration of developments as recorded by the Adjudicating

Authority regarding which developments there does not appear to be dispute. The Adjudicating Authority referred to the developments before it as under:

“2. The tortuous path the present Company Petition has traversed need a brief mention. M/s. PP Bafna Ventures Pvt. Ltd. (herein after referred to as the Financial Creditor) of M/s. KVR Industries (herein after referred to as the Corporate Debtor) filed the Company Petition under Section 7 of the Insolvency and Bankruptcy Code (the Code for short) seeking Corporate Insolvency Resolution Process (CIRP) on the allegation of default in payment of a Financial Debt. One Eshwar Enterprises, an operational Creditor (OC) of the Corporate Debtor (CD) had also filed TCP (IB) No. 119/9/AMR/2019 (the other Company Petition). The Petition was admitted by an order dated 12.02.2020 by this Authority initiating CIRP. At that stage the present Company Petition had been part-heard. Since the other Company Petition was admitted, this Authority felt that there was hardly any need to keep the present Company Petition pending. It accordingly by order dated 13.02.2020 directed the Applicant to approach the Interim Resolution Professional (IRP) in terms of Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 for further action in the matter and disposed of the present Company Petition. The Operational Creditor M/s. Eshwar Enterprises and the Corporate Debtor reached an out of court settlement

and filed I.A. No. 37 of 2020 (in the other Company Petition) for withdrawal of the said Company Petition. This Authority by an order dated 21.02.2020 allowed the IA No. 37 of 2020 and permitted withdrawal of the other Company Petition.

3. The basis of the order dated 13.02.2020 in the present Company Petition thus having set at naught, the Financial Creditor accordingly filed IA No. 41 of 2020 seeking restoration of the present Company Petition and IA No. 42 of 2020 seeking restoration of the interim order dated 02.12.2019 of this Authority. The Respondent (CD) filed his counter to both the IAs. At the same time it also filed two applications namely, IA Nos. 51 of 2020 and 52 of 2020 alleging forgery of the signature of the Applicant(FC) in IA Nos. 41 and 42 of 2020. Counters were sought and the matter was listed for hearing. On 13.03.2020 the CD filed another application vide IA No. 62 of 2020 praying to receive the forensic examination report of the signatures (of the Applicant) appearing in IA Nos . 41 and 42 of 2020 with the admitted signature of the deponent. Counter thereto have been filed. Meanwhile because of the COVID-19 Pandemic the Court proceedings remained suspended as per the order of the Principal Bench vide letter dated 15.03.2020. The suspension of Court work was extended from time to time in tune with the lockdown promulgated by the Central and State Governments. Hearing of urgent applications were permitted to be heard through video conference as per letter dated 03.05.2020 of the NCLT Principal Bench. Accordingly,

these Applications were heard through video conferencing. Meanwhile the Applicant (FC) under the signature of Mr. Praful Prakash Bafna filed an Affidavit dated 09.05.2020 reverifying the IA. No. 41 of 2020 confirming the contents of the Application averments.

4. The Corporate Debtor vehemently objected to the IAs Nos. 41 and 42 of 2020 on the ground that the signature on the verifying affidavits (in the IAs) did not belong to Praful Prakash Bafna. It accordingly prayed to initiate criminal proceeding against Mr. Praful Prakash Bafna under Section 193 of the IPC read with Section 340 and 195 (1) (b) of the Cr. P.C. He also prayed (in I.A No. 52 of 2020) to order Mr. Praful Prakash Bafna to appear for cross-examination. It is accordingly prayed that forgery and perjury having been practiced, IA Nos. 41 and 42 of 2020 could not be allowed. While the matter was being heard, the Financial Creditor filed a memo dated 29.05.2020 (by e-mail on 30.05.2020) seeking withdrawal of the IA Nos. 41 and 42 of 2020 with liberty to file a fresh Interim Application recapitulating the contents of the Interim Application Nos. 41 of 2020. Copy was served on the other side and a counter running into several pages was filed. The filing of the memo by the Financial Creditor had a fresh twist to the already murky proceedings. It is contended by the Corporate Debtor that on the face of the applications seeking criminal prosecution and cross examination, the Financial Creditor can not be allowed to wriggle out of conundrum resulting from the multiple IAs as above. As if the drama was not enough the Financial Creditor filed

another IA on 01.06.2020 effectively reiterating the prayers made in IA No. 41 of 2020 which, it had sought under the memo dated 29.05.2020. Since the present IAs were pending this Authority by order dated 02.06.2020 directed not to number the IA.”

5. We have seen the Appeal Memo also and above developments are reflected in the Appeal Memo also. The Adjudicating Authority in the chronology missed making reference that the Financial Creditor filed I.A. No. 69 of 2020 on 05th May, 2020 with identical prayers as in I.A. Nos. 41 and 42 of 2020; and that, when Memo dated 29th May, 2020 was filed the Financial Creditor had also filed Affidavit reverifying the contents of the Affidavit in I.A. No. 41 of 2020.

6. It appears that the Financial Creditor claimed before the Adjudicating Authority that by raising disputes with regard to I.A Nos. 41 and 42 of 2020 the Corporate Debtor was creating obstruction in the restoration of CP/204/2019 with other motives with regard to the property of the Corporate Debtor so as to defeat the claims of the Financial Creditor. Thus, the I.A. Nos. 41 and 42 of 2020 were being withdrawn with liberty to file fresh I.A. The Adjudicating Authority recorded following reasons to suo motu restore CP/204/2019:

“6 The Financial Creditor made the Applications IA Nos. 41 and 42 of 2020 soon after the order dated 21.02.2020 allowing the IA No. 37 of 2020 was passed. The Order of disposal of the present Company Petition

and direction to the Financial Creditor to approach the IRP was dependent upon the order dated 12.02.2020 in the other Company Petition. That order dated 12.02.2020 was recalled consequent upon the permission to withdraw in IA No. 37 of 2020. What if, the Financial Creditor had not filed the restoration Applications in IA Nos. 41 and 42 of 2020! Would the Authority have sat upon the order dated 13.02.2020 thereby preventing the Financial Creditor from enforcement of its right available under section 7 of the Code. The answer to this question, in my considered opinion, would be no. The order dated 13.02.2020 was passed without any intervention from either of the parties. It was a suo motu order as the Authority felt that once CIRP had been initiated, no fruitful purpose would be served by keeping the present Company Petition pending. Every Applicant has the prerogative of prosecuting his application or withdrawing there from. Therefore, the memo dated 29.05.2020 could not be objected to by the Corporate Debtor. It would be for the Authority to consider it and pass appropriate orders. But by doing so, the allegations and insinuations raised as to the genuineness of the signature of the person swearing the verifying affidavit would not be washed away. Whether or not the signatures were genuine would come within the domain of the competent Criminal Court, forgery and perjury being punishable offences. In the same vein it would follow that no order of prosecution of the person verifying the affidavit can be ordered by this Authority. That would be outside the realm of the jurisdiction conferred on this Authority.

Therefore, I refrain from making any comment and passing any orders on the merits of IA Nos. 51 and 52 of 2020. That however would not preclude anybody including the Corporate Debtor to raise the matter of forgery and perjury before a competent forum. While allowing the withdrawal of IA Nos. 41 and 42 of 2020, I am not inclined to grant any liberty to the Applicant (FC) to file another application for the same prayer as in IA No. 41 of 2020. The Applicant (FC) having withdrawn from pressing the prayer therein could not be allowed to reagitate the matter by another application for whatever reasons, be it of substance or form or other technicalities. Therefore I am not inclined to grant the Applicant (FC) liberty to file another Application for the self-same prayer. Accordingly, I have no reason before me to allow withdrawal of the Application and at the same time grant liberty to file another. The withdrawal simpliciter can however be permitted. The reverifying affidavit has no bearing on the issues raised in the IA Nos. 51 and 52 of 2020. Therefore, it needs no consideration.”

7. The Adjudicating Authority recorded further reasons that the Financial Creditor could not be left without remedy as there was no negligence on the part of the Financial Creditor, when the Company Petition was disposed because the other Petition of M/s. Eshwar Enterprises was admitted. The Adjudicating Authority recorded that the Financial Creditor had a right to file the Company Petition and was entitled to get the same decided on merits. Relying on the dicta that

procedure is the handmaiden of Justice the Adjudicating Authority granted the relief suo motu.

8. The Adjudicating Authority observed that although the Applications (I.A. No. 41 and 42 of 2020) are not pressed the Petitioner can not be left without remedy and for reasons recorded restored the Company Petition to file and relegated the same to date of hearing as on 11th February, 2020. The Corporate Petition was posted to 06.07.2020 for hearing and further Orders.

9. With regard to the allegations raised of forgery and perjury in I.A. Nos. 51 and 52 of 2020 we have seen (in above Paragraph 6 reproduced) the Adjudicating Authority was of the view that it could not order prosecution of the person verifying the affidavit. The Adjudicating Authority further observed in Paragraph 11 of the Impugned Order that by the Impugned Order the allegations of forgery and perjury shall not be affected and the Corporate Debtor may approach appropriate authority for redressal of grievances raised in the I.A. Nos. 51 and 52 of 2020. The Adjudicating Authority observed, it would be venturing into jurisdiction of Criminal Court. Thus, the Adjudicating Authority disposed of the I.A. Nos. 51 and 52 of 2020 with observations that the Corporate Debtor may approach appropriate forum for redressal.

The Arguments in short

10. The Learned Counsel for the Appellant in the course of the arguments before us submitted that the Interlocutory Applications bearing I.A. Nos. 41 and 42 of 2020 were filed allegedly under the signature of Mr. Praful Kumar Bafna for the Financial Creditor and the Corporate Debtor found that the signatures were forged and fabricated. I.A. No. 51 of 2020 was filed under Section 193 of Penal Code read with Section 195 (1) (b) (i) of Cr. P.C. read with Section 340 of Cr. P.C. to hold preliminary inquiry and initiate Criminal Proceedings for perjury and fraud. I.A. No. 52 of 2020 was filed so as to call Mr. Praful Kumar Bafna for cross-examination with regard to the signatures in I.A. Nos. 41 and 42 of 2020. I.A. No. 62 of 2020 (Annexure P8 Page 141) was filed with prayer to place on record forensic document which was report dated 2nd March, 2020. The Learned Counsel has stated that the Adjudicating Authority erred in suo motu restoring CP/204/2019 permitting withdrawal of forged applications bearing I.A. Nos. 41 and 42 of 2020. According to him, the Adjudicating Authority also erred in directing the Corporate Debtor to approach appropriate forum for filing complaint without the Adjudicating Authority itself holding preliminary inquiry and taking action under Section 340 of Cr. P.C. It is argued that in the matter of *“Narendra Kumar Srivastava Vs. State of Bihar”* ((2019) 3 SCC 318) it has been held that for offence under Section 193 of the Penal Code, procedure under Section 340 read with Section 195 (1)(b)(i) of Cr. P.C.

has to be followed. It is argued that submitting forged affidavit means to giving forged evidence under Section 193 of IPC. For offence of perjury, the Judicial Proceeding has to be initiated by the same Court and according to the Learned Counsel complaints should have been filed after holding preliminary inquiry.

11. Against this, the case put up by the Financial Creditor/Respondent is that discrepancies in the signatures of the Interim Applications, if any, were entirely inadvertent, accidental and due to sheer chance or ignorance (see Written-Submissions of Respondent Diary No. 23599). The Respondent has also filed Reply Diary No. 21564. The Argument of Respondent/Financial Creditor is that Mr. Praful Bafna had filed Affidavit dated 09th May, 2020 before the Adjudicating Authority reaffirming the contents of I.A. No. 41 and 42 of 2020. It is argued that the Corporate Debtor maliciously raised contentions that Mr. Praful Bafna's signatures were forged and Criminal Proceedings under Section 340 of Cr. P.C. should be initiated, with intention to delay the proceedings before the Adjudicating Authority to avoid legal obligations to repay the Financial Creditor's debt which is to the tune of Rs. 12.45 crores. It is argued that the Corporate Debtor obtained unauthorised report from Private Forensic Lab and filed the same under I.A. No. 62 of 2020. The Financial Creditor claims that the said Report is fabricated in conspiracy. It is also claimed that there are Judgments to show conviction can not be found solely on the opinion furnished by the Handwriting Expert and Court is required to

see whether there is direct or circumstantial evidence to corroborate the opinion of the Handwriting Expert. It is also argued that evidence of Handwriting Expert is only an opinion and is not conclusive. The Financial Creditor claims that the Interim Applications bearing I.A. No. 41 and 42 of 2020 filed had true contents and factual background and the Financial Creditor also filed affidavit reaffirming all the contents of the Interim Applications and thus the disputes being raised by the Corporate Debtor are malicious, baseless and frivolous. Referring to the contents of I.A. Nos. 41 and 42 of 2020, it is argued that all the averments and statements made therein were matters of facts and record and there was no falsehood in the two Interim Applications. It is argued that the Corporate Debtor has tried to sell off assets and stocks of the Company during pendency of present proceedings and therefore the Adjudicating Authority had passed orders on 2nd December, 2019 directing parties to maintain status-quo with regard to the assets and property of the Company. According to the Learned Counsel for the Financial Creditor there were no false averments or statements made in the Interim Applications and Section 193 of IPC were not attracted. Even regarding the allegation of forgery it is argued that the signatures on the Interim Applications were genuine and true and Section 463 of Penal Code is committed if someone makes false document as per Section 464 of Penal Code: It is argued that this being so, when the signatures on the Applications are genuine and true, Section 464 of the Penal Code would

not be attracted. It is also argued that to invoke Section 464 of Penal Code false document has to be made with a dishonest and fraudulent intention as was held in the matter of “*Dr. Vimla Vs. Delhi Administration*” by Hon’ble Supreme Court in Criminal Appeal No. 213 of 1960 decided on 29th November, 1962 (MANU/SC/0163/1962) (1963 SCR Supl. (2) 585). The Financial Creditor has submitted that to order prosecution of perjury there must be prima facie case of deliberate falsehood and matter of substance and Court has to be satisfied that there is reasonable foundation for the charge. Mere inaccurate statement can not be basis for charge of perjury. It is argued that I.A. Nos. 41 and 42 of 2020 were filed with bona fide intention to restore CP/204/2019 and to restore earlier order dated 2nd December, 2019. It is further argued that under Section 340 of Cr. P.C. Court is not bound to make a complaint regarding commission of offence referred in Section 195 (1) (b) (i) as the Section is conditioned by the words “Court is of opinion that it is expedient in the Interest of Justice” to initiate proceedings.

Suo Motu Restoring of C.P.(IB) 204/7/AMR/2019

12. Having heard Learned Counsel for parties and having gone through the record as has been placed before us, firstly we look into the Impugned Order suo motu restoring CP/204/2019. We have gone through the reasons recorded by the Adjudicating Authority and part of which we have reproduced above. There is no dispute with regard to the

fact that the Financial Creditor had filed Annexure P3 (Page 62) Application under Section 7 of IBC having No. CP/204/2019. It is not disputed that Application under Section 9 of M/s. Eshwar Enterprises which was also filed against the Corporate Debtor having TCP/(IB)/119/9/AMR/2019 got admitted on 21st February, 2020 and CIRP was initiated. The Proceeding at Page 84 of the Appeal Paper Book shows that on 13th February, 2020 the Adjudicating Authority recorded that TCP/(IB) No. 111/9/AMR/YP/2019 (In impugned order number Recorded is “119” and there is some typing error) against same Corporate Debtor has initiated CIRP and thus there was no need to keep the present Petition CP/204/2019 pending and the Applicant can submit claim before IRP and accordingly disposed the Company Petition. There is no dispute that the other Proceeding initiated by M/s. Eshwar Enterprises later on was settled and said proceeding was withdrawn. Because of that, the Financial Creditor filed I.A. No. 41 and 42 of 2020 (Annexure P5 Page 88 to 99). (It is signatures in these applications regarding which contentions are raised by the Corporate Debtor). We find ourselves in agreement with the Adjudicating Authority that when the other proceeding initiated by M/s. Eshwar Enterprises attracted suo motu directions of the Adjudicating Authority to dispose of the CP/204/2019, and when the proceeding of M/s. Eshwar Enterprises later got withdrawn, the Financial Creditor did have a right to get its application decided on merits. Considering controversy which has come

up in the present matter, and the time it was consuming, if the Financial Creditor which had also filed I.A. No. 69 of 2020 and another unnumbered application with similar prayers as in I.A. Nos. 41 and 42 of 2020 and then sought withdrawal of I.A. No. 41 and 42 of 2020, there was nothing wrong in the Adjudicating Authority adopting course it did. Considering the disputes which had come up Adjudicating Authority adopted the course of accepting of the memo (Annexure P10 Page 154) and letting I.A. Nos. 41 and 42 of 2020 be withdrawn to cut short the delays. It suo motu restored the CP/204/2019. Under Section 424 of the Companies Act, 2013 (with amendment extending it to IBC, inserted by Act 31 of 2016 with effect from 15th November, 2016) Adjudicating Authority is guided by Principles of Natural Justice. The Adjudicating Authority has ample Inherent powers even under Rule 11 of the National Company Law Tribunals Rules, 2016 to make such Orders as may be necessary for meeting ends of justice or to prevent abuse of the process of the Tribunal. If the Adjudicating Authority in order to cut short the delay which was being caused due to the controversies raised by the Corporate Debtor and consequential abuse of process suo motu restored CP/204/2019 we do not find that it committed any error. The Interest of Justice and the facts and circumstances of the matter required such suo motu action on the part of the Adjudicating Authority. We thus maintain this part of the order of the Adjudicating Authority.

Such action for Criminal Prosecution should have been taken?

13. The Adjudicating Authority in the impugned Order observed that no order of prosecution of the person verifying the affidavit can be ordered by the Authority and it was outside the realm of jurisdiction of the Authority. For such reasoning, the Adjudicating Authority without going into the merits of I.A. No. 51 and 52 of 2020 proceeded to observe that the Corporate Debtor may approach the appropriate forum for redressal. It observed that, it would be venturing into jurisdiction of Criminal Court if it went into I.A. No. 51 and 52 of 2020.

With regard to these observations and findings, reference needs to be made to Section 424 of the Companies Act, 2013 which was amended by Act 31 of 2016 w.e.f. 15.11.2016 and reference to IBC was inserted. Section 424 of the Companies Act, 2013 reads as under (amended Section 424):

“424. Procedure Before Tribunal and Appellate Tribunal.- (1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act ¹[or of the Insolvency and Bankruptcy Code, 2016] and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act¹[or under the Insolvency and Bankruptcy Code, 2016], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908.) while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding it ex parte;

(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(h) any other matter which may be prescribed.

(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situate; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(Emphasis Supplied)

14. Now **Section 195 of IPC** requires reference. The same reads as follows:

“(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or (ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to

have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), ²⁹[except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term " Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the

principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

15. Section 340 of Cr. P.C. is also relevant and is as follows:

“340. (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

**[(b) in any other case, by the presiding officer of the Court, or by such officer of the Court as the Court may authorise in writing in this behalf.]*

(4) In this section, " Court" has the same meaning as in section 195."

16. As the Corporate Debtor is harping on **Section 193 of Penal Code** the same also be referred which is as under:

"193. Punishment for false evidence.—Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Section 193 of Penal Code has three explanations which are not necessary to reproduce but can be kept in the view.

17. Section 195 (3) of Cr. P.C. referred above shows that the term “Court” used in the Section includes the Tribunal constituted by or under Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this Section. We have already seen Section 424 which in Sub-Section 4 has included the National Company Law Tribunal and National Company Law Appellate Tribunal under the Companies Act and proceedings before these Tribunals have to be deemed to be Judicial Proceedings within the meaning of Section 193 and 228 and for the purposes of Section 196 of the Indian Penal Code and the NCLT this Tribunal shall be deemed to be Civil Court for the purposes of Section 195 and Chapter XXVI of Cr. P.C. Chapter XXVI contains Section 340 of Cr. P.C. As per Section 5 (1) of IBC the “Adjudicating Authority” for the purposes of Part-II of IBC, means National Company Law Tribunal constituted under Section 408 of the Companies Act, 2013. Under Section 61 of IBC any person aggrieved by the order of the Adjudicating Authority may prefer an Appeal to National Company Law Appellate Tribunal. These Provisions make it clear that Adjudicating Authority was not right in its observations that it did not have jurisdiction to order Prosecution. In our view in appropriate case, the Adjudicating

Authority has powers to act in terms of Section 340 of Cr. P.C. read with Section 195 of Cr. P.C. Under Section 340 of Cr. P.C. the Adjudicating Authority can hold preliminary inquiry if it is “of opinion that it is expedient in the Interest of Justice that an inquiry should be made” into the any offence referred in Clause ‘b’ of Sub-Section 1 of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, i.e.-Adjudicating Authority, here.

18. The Learned Counsel for the Appellant/Corporate Debtor has argued that without Adjudicating Authority holding preliminary inquiry and going through the procedure as prescribed under Section 340, it is not possible for the Appellant to file private complaint before any Magistrate for the Act complained as there is bar created under Section 195 of Cr. P.C. and no Court will take cognizance. The Learned Counsel has relied on various Judgments. We do not think it is necessary to refer to the various Judgments as it is apparent to us that no Court can take cognizance of offence punishable under Sections as mentioned in Section 195(1)(b)(i) except on complaint in writing by the Court concerned. Reference to Judgment in the matter of “*Narendra Kumar Srivastava Vs. State of Bihar*” (2019) 3 SCC 318 itself makes the points clear which parties are raising against each other. In the matter of “*Narendra Kumar Srivastava*” Contempt case was dropped by High Court on the basis of compliance shown by Respondents in show-cause affidavit. Appellant therein filed Private Complaint before Assistant Chief Judicial Magistrate alleging that because of

the false and wrong statement made by Respondents in their show-cause affidavit, High Court dropped Contempt Case. Magistrate took cognizance but in Revision, High Court set aside the Order. Appeal was filed to Supreme Court. Hon'ble Supreme Court maintained Order of High Court *inter alia* observing:

“17. Section 340 CrPC makes it clear that a prosecution under this section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195 (1) (b) has allegedly been committed. The object of this section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted.

18. This Court in *Chajoo Ram V. Radhey Shyam*⁶ , held that the prosecution under Section 195 CrPC could be initiated only by the sanction of the court and only if the same appears to be deliberate and conscious. It emphatically held as under: (SCC p. 779, para 7)

“7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily

and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge.”

19. In *Santokh Singh V. Izhar Hussain*⁷, this Court has held that every incorrect or false statement does not make it incumbent on the court to order prosecution. The court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify the feelings or personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that the court should direct prosecution.

6 (1971) 1 SCC 774 : 1971 SCC (Cri) 331

7. (1973) 2 SCC 406 : 1973 SCC (Cri) 828”

(Emphasis Supplied)

19. The present Appeal has been filed being aggrieved by the orders of the Adjudicating Authority and the Appellant has sought setting aside of the impugned Orders and prayed that we may pass orders as deemed fit. The Appellant’s grievance is that the Adjudicating Authority should have held

preliminary inquiry and directed prosecution. We look into this grievance keeping above Judgment of Hon'ble Supreme Court in view.

20. The Appellant/Corporate Debtor as per provisions referred and case law requires to satisfy us that "it is expedient in the Interest of Justice that an inquiry should be made".

Broadly putting the facts of the present matter in nutshell when the CP/204/2019 of the Financial Creditor was disposed asking the Financial Creditor to go to the IRP in the matter of M/s. Eshwar Enterprises, and later that other matter got settled, the natural corollary was that the Financial Creditor was entitle to claim in interest of justice that the Adjudicating Authority restore the CP/204/2019 as well as Interim Orders which had been passed earlier in its Petition. For this Financial Creditor filed I.A. Nos. 41 and 42 of 2020. It is not the argument before us that the contents or averments made or statements made in the two Interim Applications were false. The whole argument is centred on the signatures which were put below the I.As. The Corporate Debtor is going on repeating and insisting that the concerned signatures are not of Mr. Praful Prakash Bafna.

21. In the Appeal, copy of CP/204/2019 is filed as Annexure P3 page 62. The copy of General Affidavit Verifying Petition is at Page 79. Copy of Board Resolution signed by Director Y.P. Bafna Authorizing Mr. Praful Prakash Bafna is at Page 80. The Appellant is comparing signatures of the authorised signatory on the General Affidavit Verifying Petition (Page 79) and Vakalatnama (Page 82) with the signatures below (Annexure P5 – Page 88 to

101) I.A. No. 41 of 2020 and I.A. No. 42 of 2020. On various pages of the two I.As the rubber stamps of the “Director/Authorized Signatory” (as on Authorization, Company Petition and Vakalatnama) are put, and signed. The affidavits filed in support are notarised.

22. The Corporate Debtor is insisting only with regard to the signatures on I.A. Nos. 41 and 42 of 2020. The Financial Creditor filed I.A. No. 69 of 2020 (Annexure P9 Page 148) which shows that the Financial Creditor opposed the I.A. Nos. 51 and 52 of 2020 of the Corporate Debtor as well as the I.A. No. 62 of 2020 (Annexure P8) that the same was filed to create procedural and technical hurdles and to divert attention of the Tribunal making false and baseless allegations against the Financial Creditor. The Application sought to restore the CP/204/2019 and the earlier order dated 2nd December, 2019. Similar averments were made in subsequent Memo (Annexure P10 page 154) and Financial Creditor claimed that with regard to I.A Nos. 41 and 42 of 2020 wrongful contentions issues are raised causing unreasonable delay and deviations and that to expedite hearing of the Petition it wants to withdraw the I.A. Nos. 41 and 42 of 2020 with liberty to file fresh Interim Applications recapitulating the contents of the Interim Applications.

23. The I.A. No. 62 of 2020 (Annexure P8) shows that the Corporate Debtor acted on its own to get forensic report. Paragraphs 6 and 7 of the said Annexure P8 may be reproduced which read as under:

“6 It is respectfully submitted that, the signatures of Mr. Praful Prakash Bafna on the interim applications are different from signatures of Mr. Praful Prakash Bafna in the present Company Petition. The signatures are forged and made to believe that they are signed by Mr. Praful Bafna who allegedly came down to Hyderabad on 21.02.2020. The copy of Company Petition and Interim Applications I.A. No. 41 of 2020 and I.A. No. 42 of 2020 are filed herewith as **Annexure-2, Annexure -3 and Annexure -4**. The Comparative Table of signatures in Company Petition and forged signatures in Interim Applications IA No. 41 of 2020 and 42 of 2020 are filed herewith as **Annexure A-5**.

7. It is respectfully submitted that the Corporate Debtor has vide Letter dated 27.02.2020 submitted a request with Truth Labs Forensic Services to verify, analyze and issue a forensic report on the signatures of Mr. Praful Prakash Bafna on behalf of the Financial Creditor in the vakalatnama filed in the present company petition and I.A. No. 41 of 2020, I.A. No. 42 of 2020 and Business Management Agreement dated 29.12.2018. A copy of the Letter dated 27.02.2020 is filed herewith as **-Annexure - 6.**”

24. The Financial Creditor has filed Reply before us (Diary No. 21564) and stated in Reply Paragraph 6 as under:

“6. The contents of sub-para 10 are denied as false and baseless. It is expressly denied that any false statement was submitted by the Respondent by way of IA Nos. 41 and 42. There is no offence committed by the Respondent by merely requesting the Hon’ble Tribunal by

way of the Interim Applications under question to reinstate the proceedings under C (I.B) 204/7/AMR/2019 in light of the fact that the CIRP has been cancelled by the Hon'ble Tribunal's order dated 21.02.2020 in CP (I.B)No. 111/9/AMR of 2019. Notwithstanding the fact that the Appellant has admittedly stated in its pleadings that Mr. Bafna was present in Hyderabad at the time of filing IA Nos. 41 and 42, the Respondent also filed an affidavit reaffirming the contents of IA Nos. 41 and 42 and has thereafter withdrawn the IA Nos. 41 and 42. **It is submitted that a purported difference in a signature does not mean that it is fraud or perjury. Signatures of a person do vary at different points of time. It is also an established rule of law that a defect in regard to the signature on a plaint is a technical irregularity relating to matters of procedure which can be cured at any time irrespective of the limitation or other procedural hurdles.** These unwarranted and fictitious accusations are a feeble attempt by the Appellant to mislead the Hon'ble Appellate Tribunal and create hurdles to delay the progress of CP (I.B) 204/7/AMR of 2019 pending before the Hon'ble Tribunal. **It is also not the case of the Appellant that any unfair advantage or a dishonest gain or profit has been made by the Respondent in not deliberately appending his signatures on the aforementioned applications. The Offences complained of by the Appellant necessarily entail mensrea, in the absence of an intent the offence is not made out. Moreover, no unfair advantage or dishonest gain has been made by the Respondent by not reproducing the exact same signatures on the aforementioned**

applications. Furthermore, no injury, loss, harm or damage whether pecuniary or otherwise has been caused to the Appellants.

25. We find substance in the defence taken by the Financial Creditor to the I.As 51 and 52 of 2020. The Appellant/Corporate Debtor has not shown us that the Financial Creditor would have any advantage or benefit of putting false signatures. The prayer of I.A. No 51 of 2020 (The Appeal Page 118) claims that the I.A. Nos. 41 and 42 of 2020 are not signed by the authorized signatory Mr. Praful Prakash Bafna and prayer is to initiate criminal proceedings against Mr. Praful Prakash Bafna under Section 340 read with Section 195 of Cr. P.C. and Section 193 of the Penal Code. If Mr. Praful Prakash Bafna has not signed his prosecution is being sought. The Corporate Debtor appears to have bulldozed when without asking the Adjudicating Authority to pick and send the admitted and disputed signatures for report of Handwriting Expert, on its own it sent documents which were in its possession and then brandished the said Report filing I.A. No. 62 of 2020 asking the Adjudicating Authority to take it on record. What the conclusion of that Report can be seen from Paragraph 8 of I.A. No. 62 of 2020 (Annexure P8 Page 141 at 144). The Corporate Debtor claimed that the Report dated 2nd March, 2020 conclusively found that the signature of Mr. Praful Prakash Bafna in I.A. Nos. 41 and 42 of 2020 were not “naturally executed but they must have traced/transplanted/copy-pasted”. When the admitted and disputed signatures were not sent through the Adjudicating Authority, and Corporate Debtor sent copies of documents it had, such

report could naturally be expected. Copy of the Report has not been placed before us.

26. We are of the view that even without going into the merit whether or not, the signatures are matching, the Appellant has not shown that the Financial Creditor or Mr. Praful Prakash Bafna the authorized Signatory had anything to gain by authorized signatory not signing. The contents of the I.As were false is also not the case. The Appellant/Corporate Debtor has not prima facie shown any intention or *mensrea* on the part of the Financial Creditor in this regard. Section 193 of Penal Code makes fabricating of false evidence for the purpose of being used in any stage of judicial proceeding punishable. Section 192 of Penal Code requires intention as specified therein to term the act as “fabricating false evidence”. No prima facie material is shown by Corporate Debtor that by Praful Bafna himself not signing, the Adjudicating Authority would “entertain an erroneous opinion touching any point material” to the result of the proceeding. (This is not to be taken as any finding whether or not he signed. We are only seeking material for “opinion” as required under Section 340 of Cr.P.C.) In the facts of the matter it does not appear to us that it is expedient in the Interest of Justice that an inquiry should be made under Section 340 of Cr. P.C. No such case was made out before the Adjudicating Authority and the Appellant has not convinced us that Interest of Justice required an inquiry to be held and so the order of Adjudicating Authority should be interfered with.

27. We have taken note of the relevant circumstances and the reasons for the Financial Creditor to move I.A. Nos. 41 and 42 of 2020 and the controversy raised by the Corporate Debtor and it appears to us that there is an element of frivolity in the disputes being raised by the Corporate Debtor. From the facts of the matter, we are unable to form opinion that it is expedient in the interest of justice that inquiry as sought by the Appellant should be made.

28. The Appellant is right in claiming that the Adjudicating Authority could not have directed the Appellant to approach appropriate forum for redressal and that on this count it had jurisdiction under Section 340 of Cr. P.C. However Appellant fails to convince us that facts and circumstance of the matter required Adjudication Authority to form opinion that it is expedient in the interest of justice that an inquiry should be made into alleged offence. It appears to us that the observations made by the Adjudicating Authority regarding jurisdiction may have to be modified.

29. For the above reasons, we pass the following Order:

- i.** The Order of the Adjudicating Authority dismissing I.A. Nos. 41 and 42 of 2020 as not pressed is maintained.
- ii.** The observations of the Adjudicating Authority that the Corporate Debtor may approach appropriate forum for redressal of I.A. Nos. 51 and 52 of 2020 and directions in that regard are set aside.

iii. I.A. No. 51 and 52 of 2020 shall stand disposed as it does not appear that it is expedient in the Interest of Justice to hold preliminary inquiry under Section 340 of Cr. P.C.

iv. Disposal of I.A. No. 62 of 2020 as directed by the Adjudicating Authority is maintained.

v. The restoration of the CP (I.B)/204/7/AMR/2019 and further directions in that regard are maintained.

The Appeal is disposed accordingly. No costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[V.P. Singh]
Member (Technical)

New Delhi
Basant B.